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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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COMMISSIONERS:

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James R. Curtiss
Forrest J. Remick
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In the Matter of:
TEXAS UTILITIES ELECTRIC
COMPANY, et al.

(Comanche Peak Steam Electric
Station, Unit 2)

Docket No. 50-446

RECEIVED JAN 29 1993

MEMORANDUM AND ORDER

CLI-93- 01

I. Introduction.

This matter is before the Commission on a request by the Citizens for Fair Utility Regulation ("CFUR" or "petitioner") asking that the Commission issue a Federal Register Notice offering a hearing on the proposed issuance of an operating license for Unit 2 of the Comanche Peak Steam Electric Station ("Comanche Peak"). The licensee, Texas Utilities Electric Company ("TU Electric" or "licensee") and the NRC Staff have responded in opposition to the request. After due consideration, we deny CFUR's request for the reasons stated below.

II. Background.

On February 5, 1979, the NRC published a Federal Register notice announcing TU Electric's request for an operating license for both Unit 1 and Unit 2 of Comanche Peak. See 44 Fed. Reg. 6995 (Feb. 5, 1979). CFUR filed a timely petition to intervene and a request for a hearing on the requested

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licenses. On June 27, 1979, the Licensing Board issued an order granting CFUR's petition to intervene in the proceeding. See Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-79-18, 9 NRC 728 (1979). The order also granted two other petitions to intervene from two other organizations and granted a request from the State of Texas to participate as an "interested state." Subsequently, the Licensing Board issued an unpublished order on April 2, 1982, granting CFUR's request to withdraw from the proceeding. A second intervenor had already withdrawn in 1981.

The proceeding continued with the Citizens Association for Sound Energy ("CASE") as the sole intervenor until the parties reached a settlement agreement dismissing the proceeding. See Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-88-18A, 28 NRC 101 (1988); Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-88-18B, 28 NRC 103 (1988). At that time, CFUR attempted to re-intervene in the proceeding; however, the Commission found that CFUR had failed to demonstrate that its petition met the criteria for late intervention in 10 C.F.R. §2.714(a)(1)(i)-(v). See Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-88-12, 28 NRC 605, 609 (1988), as modified, Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-89-06, 29 NRC 348 (1989). CFUR filed a petition for review of that denial but the Commission's decision was upheld. Citizens for Fair Utility Regulation v. NRC, 898 F.2d 51 (5th Cir.), cert. denied, 111 S.Ct. 246 (1990).

The NRC Staff issued a full power operating license to TU Electric for Comanche Peak Unit 1 on April 17, 1990. The NRC Staff has now completed its

preliminary reviews and is currently preparing to issue a low-power license for Comanche Peak Unit 2.

III. Analysis.

Issuance of the full power license for Unit 1 closed out the opportunity for a hearing on the Unit 1 operating license under the 1979 Federal Register notice; however, until the full power license for Unit 2 has actually been issued, the possibility of a reopened hearing is not entirely foreclosed. For example, a person may request a hearing concerning the Unit 2 operating license under the 1979 Federal Register notice if the requestor can satisfy the late intervention and reopening criteria. See Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-01, 35 NRC 1, 6 n.5 (1992) ("CLI-92-01).

In essence, CFUR's request constitutes a petition for late intervention and to reopen the record. However, CFUR has failed to address the standards governing such requests set out in 10 C.F.R. Part 2. Therefore, it appears that CFUR is asking the Commission to reopen the hearing on the Comanche peak Unit 2 operating license as a matter of discretion without applying the Commission's late intervention and reopening standards. Yet CFUR offers no explanation why the Commission should ignore the standards in 10 C.F.R. Part 2 for late intervention and reopening such as CFUR proposes. CFUR does assert that new issues have arisen since the initial hearings and that hearings on these matters could be beneficial. Whether the issues are in fact new and whether the hearings could be beneficial in resolving them must be weighed against the tardiness with which the petition has been presented to the Commission, the contribution the petitioners could make in resolving those

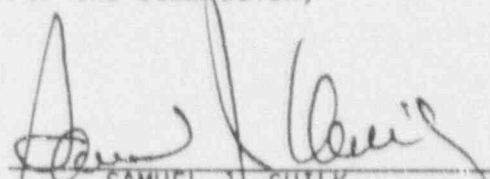
issues, and the resulting delay in the proceeding. This is the very purpose for which the late intervention and reopening standards were created. We decline to ignore these standards and, therefore, we deny CFUR's request. By this decision, we do not preclude CFUR from filing a renewed request for a hearing that addresses the relevant regulatory standards.¹

For the above reasons, we deny CFUR's request for a discretionary offer of reopened hearings on the Comanche Peak Unit 2 operating license.²

It is so ORDERED.



For the Commission,


SAMUEL J. CHILK
Secretary of the Commission

Dated at Rockville, Maryland
this 29th day of January, 1993.

¹As we noted in CLI-92-01, one must first become a party to a proceeding before seeking to reopen that proceeding. See generally CLI-92-01. Because CFUR had voluntarily withdrawn from the original Comanche Peak proceedings before the settlement agreement was concluded, CFUR does not now have the right to seek to reopen the record of the proceeding without first seeking late intervention in the proceeding. In addition, as we also pointed out in CLI-92-01, late intervention and reopening is now available only with regard to the Unit 2 proceedings. CLI-92-01, 35 NRC at 6, n.5.

²We have reviewed the technical allegations raised in the CFUR Request and the responses to those allegations by both the Licensee and the Staff. In light of the affidavits attached to the Staff's Response, we find no public health and safety reason to prevent issuance of the low power license for Unit 2 at this time.

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CERTIFICATE OF SERVICE

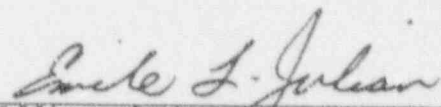
I hereby certify that copies of the foregoing CLI-93-01 DATED 1/29/93 have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Dated at Rockville, Md. this
29 day of January 1993


Office of the Secretary of the Commission

*Additional copy faxed.